

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6599 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter:

HERBERT E. GRAY, Jr.

PRECEDENT
BENEFIT DECISION
No. P-B-374

S.S.A. No.

FORMERLY BENEFIT DECISION No. 6599
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STATEMENT OF FACTS

The claimant appealed to a referee from a determination of the Department of Employment which held that he was ineligible for benefits for the week commencing June 28, 1959 on the ground that his unemployment for that week was due to the fact that a trade dispute was in active progress in the establishment where he was employed. Subsequent to the issuance of Referee's Decision No. LA-79062 we set aside the decision of the referee under section 1336 [now section 413] of the Unemployment Insurance Code.

The claimant last worked for the employer, an aircraft company in Birmingham, Alabama, on May 11, 1959 when he left his work because of a strike called by his union. According to the report of a local office of the Alabama Unemployment Compensation Agency, the trade dispute was settled by agreement between the employer and the union on Tuesday, June 30, 1959. The employees were recalled to work in order of their seniority, but because of the reduction in the amount of available work, the claimant was not recalled during the week in issue.

On Tuesday, June 30, 1959, the claimant registered for work and filed an additional claim for benefits against California as the liable state in the Birmingham Employment Security office of the Alabama Unemployment

Compensation Agency. Benefits are paid in Alabama on a calendar week basis and the additional claim was made effective June 28, 1959. On September 17, 1959, the California Department of Employment issued the determination involved in this proceeding.

The issue is whether the claimant was eligible for benefits under section 1262 of the Unemployment Insurance Code.

REASONS FOR DECISION

Section 1262 of the Unemployment Insurance Code provides:

"1262. An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

22 Cal. Adm. Code 1262-1 provides:

"1262-1. With respect to acts or periods of ineligibility under Section 1262 of the code 'week of ineligibility' shall be any week or weeks applicable to the individual under these regulations, during any portion of which his unemployment is due to his having left his work because of a trade dispute and for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

Section 143 of the code provides in part:

"143. 'Week' means a period of seven consecutive days as prescribed by authorized regulation. . . ."

22 Cal. Adm. Code 1253-1 provides:

"1253-1. The term 'week' for benefit purposes means the seven consecutive days commencing at 12:01 a.m., Sunday, and ending 12 midnight the following Saturday."

22 Cal. Adm. Code Section 1253-11 provides that:

"1253-11. Week -- Interstate Claimants. 'Week of unemployment' as used in Sections 455-1 through 455-8 of these regulations relating to interstate claimants shall be the seven-consecutive-day period for which interstate claimants are required to file under the agent state procedures at the time of filing a claim for benefits."

Since Alabama is a state which uses the calendar week, the week in issue is the week beginning June 28, 1959. During a portion of this week the claimant continued out of work by reason of the fact that the trade dispute was still in active progress in the establishment in which he was employed. Under section 1262-1 of the regulations hereinbefore set forth, the claimant would be ineligible for any benefits for the week commencing June 28, 1959. This raises the issue of whether the regulation alters or amends the statute (1262 of the code) or enlarges or impairs its scope (Disability Decision No. 549).

In this respect, the statute provides that a claimant shall remain ineligible for benefits "for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress" A literal interpretation of this language would indicate that the claimant would not be ineligible for benefits for the remaining days of the week commencing June 28, 1959 in which his unemployment was not due to the active progress of the trade dispute. However, we have held that unemployment compensation benefits, as distinguished from disability benefits, are payable for full weeks and not for portions thereof (Benefit Decision No. 6168 and Disability Decision No. 634; section 143 of the code and section 1253.1, title 22, California Administrative Code). Under these circumstances, we conclude that the regulation in question (section 1261.1) does not alter or amend the statute or enlarge or impair its

scope. To the contrary, it is our opinion that the regulation is consistent with the statute when considered in the light of the definition of a "week" and that unemployment compensation benefits must be paid on a weekly basis.

DECISION

The determination of the department is affirmed. The claimant is ineligible for benefits under section 1262 of the code for the week commencing June 28, 1959.

Sacramento, California, February 5, 1960.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

WM. A. NEWSOM (Absent)

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6599 is hereby designated as Precedent Decision No. P-B-374.

Sacramento, California, January 24, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES